

AMENDED IN SENATE JULY 1, 2008

AMENDED IN SENATE JUNE 16, 2008

AMENDED IN ASSEMBLY MAY 23, 2008

AMENDED IN ASSEMBLY APRIL 21, 2008

AMENDED IN ASSEMBLY APRIL 8, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 1806

Introduced by Assembly Member Wolk

January 16, 2008

An act to add Chapter 4.5 (commencing with Section 1450) to Division 2 of the Fish and Game Code, and to amend Section 1552 of, to add Section 12221 to, and to add Chapter 1.5 (commencing with Section 12210) to Part 4.5 of Division 6 of, the Water Code, relating to resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 1806, as amended, Wolk. Fishery resources.

(1) Existing law authorizes the Department of Fish and Game to enter into various agreements with public and private entities for the protection, conservation, and management of fish and wildlife resources. The Natural Community Conservation Planning Act authorizes the department to enter into agreements with any person or public entity for the purpose of preparing a natural community conservation plan, to provide comprehensive management and conservation of multiple wildlife species. The act requires a plan to identify and provide for those measures necessary to conserve and manage natural biological diversity

within the plan area while allowing compatible and appropriate economic development, growth, and other human uses. Other existing law prohibits an entity from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or from depositing certain material where it may pass into any river, stream, or lake designated by the department, without first notifying the department of that activity, and entering into a lake or streambed alteration agreement, if required by the department to protect fish and wildlife resources.

This bill would require the department to prepare and implement a set of protocols to be used to evaluate the need for fish rescue and relocation plans and actions on behalf of the Sacramento-San Joaquin Delta fishery resources, and to guide the implementation of those actions. The bill would require the department to expedite the approval of any permit required from the department for implementation of fish rescue efforts *on public lands*.

(2) Under existing federal law, the United States Bureau of Reclamation operates the Central Valley Project and appropriates water for the beneficial uses of that project pursuant to permits granted by the State Water Resources Control Board and subject to specified state laws. The Department of Water Resources operates the State Water Resources Development System and appropriates water for that system pursuant to permits granted by the state board.

~~This bill would require the state board, on or before January 1, 2010, to review a specified mass fish death incident in connection with a bureau levee repair project, determine appropriate actions to mitigate the destruction of fish in that incident, and impose, to the extent authorized by law, terms and conditions on the permits of the bureau to implement those identified actions.~~

~~The~~

~~This bill would require the state board, based on a prescribed review which the state board would be required to undertake, to reopen and impose terms and conditions on water rights permits for the state system and the federal project with regard to the delta that provide reasonable mitigation for both direct and indirect adverse impacts on delta fishery resources arising from the operation of the water export facilities of the state system and the federal project. The bill would require the state board to report to the Legislature on the implementation of those requirements by January 1, 2010. The state board would be required to~~

incorporate the costs of implementing this provision into the calculation of specified water use fees.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 4.5 (commencing with Section 1450) is
2 added to Division 2 of the Fish and Game Code, to read:

3
4 CHAPTER 4.5
5

6 1450. (a) The Legislature finds and declares that, in situations
7 where the Sacramento-San Joaquin Delta fishery resources are at
8 risk due to manmade or natural events, it is consistent with the
9 mission and public trust responsibilities of the department to
10 coordinate fishery rescue and relocation efforts, including engaging
11 volunteers in those efforts.

12 (b) The department shall prepare and implement a set of
13 protocols to be used to evaluate the need for fish rescue and
14 relocation plans and actions on behalf of the Sacramento-San
15 Joaquin Delta fishery resources, and to guide the implementation
16 of those actions.

17 (c) During the development of the protocols, the department
18 shall consult with interested local, state, and federal stakeholders,
19 including landowners and recreational fishing groups. During this
20 collaboration, the department shall solicit the establishment of
21 networks of volunteers *with suitable training and background*
22 willing to assist during an incident for which the department
23 determines that fish rescue or relocation is appropriate.

24 (d) The protocols shall be adopted by the department no later
25 than ~~January~~ June 30, 2009. The protocols shall be posted on the
26 department's Internet Web site, along with information relating
27 to becoming a volunteer, as described in subdivision (c).

28 1451. If there is an ~~emergency~~ *urgent situation* that threatens
29 fishery resources on public lands, the department shall expedite
30 approval of any permit required from the department for
31 implementation of fish rescue efforts.

32 ~~1452. On or before January 1, 2010, the State Water Resources~~
33 ~~Control Board shall do all of the following:~~

~~(a) Review the mass fish death incident at Prospect Island in the fall of 2007 in connection with the United States Bureau of Reclamation's levee repair project.~~

~~(b) Determine appropriate actions to mitigate the destruction of fish in that incident.~~

~~(c) Impose, to the extent authorized by law, terms and conditions on the permits issued in accordance with Part 2 (commencing with Section 1200) of Division 2 of the Water Code to the United States Bureau of Reclamation with regard to the federal Central Valley Project to implement the actions identified in subdivision (b).~~

SEC. 2. Section 1552 of the Water Code is amended to read:

1552. The money in the Water Rights Fund is available for expenditure, upon appropriation by the Legislature, for the following purposes:

(a) For expenditure by the State Board of Equalization in the administration of this chapter and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code) in connection with any fee or expense subject to this chapter.

(b) For the payment of refunds, pursuant to Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code, of fees or expenses collected pursuant to this chapter.

(c) For expenditure by the board for the purposes of carrying out this division, Division 1 (commencing with Section 100), Part 2 (commencing with Section 10500) of Division 6, ~~and~~ Chapter 1.5 (commencing with Section 12210) of Part 4.5 of Division 6, and Article 7 (commencing with Section 13550) of Chapter 7 of Division 7.

(d) For expenditures by the board for the purposes of carrying out Sections 13160 and 13160.1 in connection with activities involving hydroelectric power projects subject to licensing by the Federal Energy Regulatory Commission.

(e) For expenditures by the board for the purposes of carrying out Sections 13140 and 13170 in connection with plans and policies that address the diversion or use of water.

SEC. 3. Chapter 1.5 (commencing with Section 12210) is added to Part 4.5 of Division 6 of the Water Code, to read:

CHAPTER 1.5. WATER RIGHTS

12210. (a) The state board shall complete a comprehensive review of conditions in the Sacramento-San Joaquin Delta for the purpose of protecting the state's public trust resources, including all fishery resources, and federal, state, and local agency plans to protect those public trust resources. The state board, in conducting the review, shall consult with the Department of Fish and Game and the ~~CALFED Independent Science Board~~ *Independent Science Board established pursuant to Section 79470*, and shall request consultations with comment from federal fish and wildlife agencies, including, but not limited to, the United States Fish and Wildlife Service and the National Marine Fisheries Service.

(b) Based upon that review, the state board shall exercise its authority and duty under Section 2 of Article X of the California Constitution and the public trust doctrine to reopen and impose terms and conditions on water rights permits issued for the State Water Resources Development System and the federal Central Valley Project in accordance with Part 2 (commencing with Section 1200) of Division 2 with regard to the Sacramento-San Joaquin Delta that provide reasonable mitigation for both direct and indirect adverse impacts on all delta fishery resources arising from the operation of water export facilities of the state system and the federal project.

(c) The review required under subdivision (a) may include consideration of existing water rights terms and conditions, a proposed Bay-Delta Conservation Plan, federal agency biological opinions, and relevant federal court decisions pursuant to state and federal endangered species laws, ~~Oroville Facilities FERC Relicensing Settlement Agreement~~ *the Settlement Agreement for Licensing of the Oroville Facilities*, actions pursuant to the Central Valley Project Improvement Act, and any other information that the state board deems reasonably reliable, without regard to any party's submissions to the review proceeding. The review shall not be limited to species listed pursuant to state or federal endangered species laws.

(d) The state board shall prepare and submit to the Legislature, by January 1, 2010, a report on its progress in implementing this section.

1 (e) The state board shall incorporate the costs of implementing
2 this section into the calculation of its fees pursuant to Section 1525.

3 *12211. The state board may conduct the comprehensive review*
4 *of conditions in the Sacramento-San Joaquin Delta required by*
5 *this chapter as a component of a strategic work plan that the state*
6 *board adopts to direct its activities in the San Francisco*
7 *Bay/Sacramento-San Joaquin Delta Estuary.*

8 SEC. 4. Section 12221 is added to the Water Code, to read:

9 12221. All statutory references or references in state
10 government documents to the Sacramento-San Joaquin Delta,
11 without regard to whether “Sacramento-San Joaquin” is included
12 in that reference, shall be deemed capitalized.